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December 9, 2000

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RE: In the Matter of Application of SBC Communications Inc.; CC Docket No. 00-217

OKLAHOMA CORPORATION COMMISSION'S REPLY COMMENTS

Enclosed are the original and 15 copies of the Reply Comments of the Oklahoma Corporation Commission. Please file the original and fourteen copies into the record of the above-captioned proceeding, and return the extra copy to me, stamped with the filing information, in the enclosed postage prepaid, self-addressed envelope provided for your convenience.

Thank you for your assistance in this matter.

Sincerely,

Maribeth D. Snapp

Maribeth D. Snapp
Deputy General Counsel
Office of the General Counsel
Oklahoma Corporation Commission

Enclosures
cc: Layla Seirafi-Najar – Department of Justice
Katherine Brown, Esquire – Department of Justice
Donald J. Russell – Department of Justice

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Joint Application by SWBT Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Company for Provision of In-Region, InterLATA Service in Kansas and Oklahoma	)	CC Docket No. 00-217

REPLY COMMENTS OF

OKLAHOMA CORPORATION COMMISSION

Maribeth D. Snapp
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Dated: December 11, 2000

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I. PROCEDURAL HISTORY

Oklahoma has an established history of aggressively working to bring customer choice and competition to the local telephone market that predates Congressional adoption of the Federal Telecommunications Act of 1996. Preceding passage of the Federal Act, the Oklahoma Corporation Commission ("OCC") opened a Notice of Inquiry on market competition. In late 1995, Commissioner Bob Anthony circulated for comment proposed new rules including the concept of cost-based "Basic Network Functions." In today's vocabulary these functions are called "Unbundled Network Elements" (UNE). The 58-page rulemaking was formally submitted to the OCC on January 26, 1996.

As an outgrowth of a 1996 request for arbitration of the AT&T Communications of the Southwest, Inc. ("AT&T") Southwestern Bell Telephone Company ("SWBT") interconnection agreement, on June 30, 1997, the OCC adopted interim UNE rates and set a "costing docket" for the adoption of permanent rates. Parties to the costing docket included Oklahoma's Attorney General and a variety of CLECs. The parties stipulated to accept SWBT's methodology agreeing to challenge only the "inputs." On July 12, 1998, the OCC issued Order No. 424864 adopting UNE rates utilizing forward-looking economic cost principles.

In January of 1998, the OCC opened a new Notice of Inquiry on the state of competition in the local market, establishing a Telephone Advisory Group ("TAG") with numerous subcommittees working on promoting local competition. These were open meetings with input from various CLECs, including AT&T, MCI/WorldCom Telecommunications Company ("MCI") and Sprint Communications Company, L.P. ("Sprint"). In addition to the OCC's efforts, Governor Frank Keating established a Task Force on Telecommunications in 1999 consisting of representatives of the Governor, Attorney General, Speaker of the House, President

Pro Tempore of the Senate and Commissioner Denise Bode as the representative for the OCC. After a series of meetings, the Task Force reached the same conclusion as the TAG; that Oklahoma should adopt a form of alternative regulation which moved away from rate-of-return regulation. Additionally, it was determined that the regulatory framework should be established by the OCC. By contrast, other states adopted regulatory changes through legislation.

After many meetings with Commissioners' Staff, interested parties including the CLECs and Attorney General's office, and building upon recommendations from the TAG as well as looking at other states, in September of 1999, Commissioner Anthony issued an alternative regulation proposal. To be eligible for alternative regulation, an ILEC must develop a transition plan which included discounts available to CLECs. A portion of the concept was to encourage CLECs to enter the market and migrate from resellers to UNE-based servers to facility-based companies. To encourage this migration, the proposal drew upon costing dockets more recently conducted in surrounding states to establish promotional discounts for UNEs. The concept of discounts was used to preserve the integrity of the OCC's costing docket and forward-looking, cost-based rates, ensuring that Oklahoma would have the lowest UNE-P rates in the SWBT region and to provide a "kick start" for competition.

The concept was to create a strong enough incentive package to cause potential CLECs to explain "why not Oklahoma" when considering competing anywhere in the SWBT region. The rulemaking was adopted by the OCC in October, signed by the Governor, and approved by the Oklahoma Legislature during the 2000 session. On December 20, 1999, the OCC issued Order No. 437259 in which SWBT, OCC Staff, the Attorney General, AT&T, Sprint, Birch Telecom of Oklahoma, Inc. ("Birch"), Oklahoma Education Coalition, Logix Communications ("Logix"),

MCI and Cox Oklahoma Telcom, L.L.C. ("Cox OK") either stipulated to or agreed not to oppose the SWBT transition plan containing the promotional UNE discounts.

The OCC, in approving a cap on the number of lines to which the promotional UNE discounts could be applied, sought to incent CLECs to quickly enter the Oklahoma local exchange market utilizing the UNE discounts (prior to the line caps being reached), rather than wait several years before commencing to provide local exchange service in Oklahoma. A CLEC who waits until after the line caps have been met, will pay the UNE rates adopted in PUD 97-213 until such time as a new UNE costing docket is completed.

The two year moratorium on initiating a new UNE cost docket and a limit of up to five years on changing both the UNE discounts and the UNE rates which were adopted in PUD 97-213, was put in place to allow facilities-based CLECs a firm basis on which to make investment decisions; knowing that UNE rates would not be decreased beyond the promotional discounts for a minimum of two years. This was important to the facilities-based CLECs, because further reductions in the UNE rates could increase the level of competition in the local exchange market, thereby decreasing the value of the facilities-based CLEC's investment in Oklahoma. Again, the OCC sought to balance the interests of all parties and the public in adopting time limitations for the UNE discounts.

The promotional discounts were determined by receiving from CLECs a list of those UNEs they needed to be competitive in Oklahoma, and dropping the rate on those elements to be equal to or better than the rates in any of the five SWBT states. Recurring charges were discounted an average of 25 percent and non-recurring charges were discounted up to 35 percent. Additional language was added to address customer turnover. A CLEC is required to pay 50

percent of the non-recurring charge up front. If the CLEC can prove it did not keep the customer for seven consecutive months, the remaining 50 percent will be forgiven.

The new rates became effective June 15, 2000. At that time SWBT notified all CLECs holding certificates in Oklahoma. Availability of the alternative regulation discounts is also posted on the SWBT website. The promotional rates remain in effect for five years from the June 15, 2000, effective date. At expiration, they will be replaced by UNE rates to be developed under a new costing docket. The new costing docket cannot begin sooner than two years from the transition plan's effective date.

On September 28, 2000, after four and one-half days of evidentiary hearings before the OCC *en banc*, often lasting well into the evening, and after extensive deliberations by the Commissioners, the OCC issued its unanimous order recommending approval of SWBT's 271 application. Again, all CLECs as well as the Attorney General, representing consumers, were afforded the opportunity to participate in the hearing process. As stated by Commissioner Ed Apple of the OCC, the approval of SWBT's 271 application is pivotal to the development of a robust competitive environment for Oklahoma consumers and the telecommunications industry.

II. PROCEDURAL AND SUBSTANTIVE DUE PROCESS ISSUES

A. The Fact Finding Process

Cause No. PUD 97-560 ("the 271 proceeding") before the OCC was undertaken pursuant to Section 271(d)(2)(B) of the Telecommunications Act of 1996. The purpose of the proceeding before the state commission was to develop a full and complete record regarding the compliance of the Bell operating company ("BOC") with the requirements of Section 271(c) and to make a recommendation to the Federal Communications Commission ("FCC" or "Commission") relative to the BOC's request for authorization to provide in-region interLATA services. The OCC

received vast amounts of filed information relative to this application and conducted an extensive hearing from September 18 through September 22, 2000. Throughout the hearing, there was cross-examination of witnesses on issues raised by the CLECs relative to SWBT's evidence. Many exhibits were accepted into evidence at the hearing. Several of the detailed exhibits regarding charges by SWBT were developed through cross-examination of the witnesses at the hearing and entered into evidence. At the time of hearing, all parties had full opportunity to address their issues.

During this proceeding, various parties raised concerns regarding substantive and procedural due process and suggested that the conduct of the proceeding did not allow these companies to present their issues. First and foremost, the proceeding was designed to thoroughly examine evidence relative to SWBT's application for 271 relief in order to make a full and fair recommendation to the FCC. The objective was to examine each of the issues thoroughly and provide the FCC with enough factual information to show that the recommendation of approval in the 271 proceeding was well reasoned. During the course of these proceedings, all parties were given a fair opportunity to present evidence. Additionally, the OCC received oral public comments during the hearing, thereby enabling those who might have a concern with SWBT's request for 271 relief to make their opinion known to the OCC, without the necessity of filing written testimony or a written statement of position.

It should be noted that during the 271 proceeding before the OCC, that Environmental Management Inc. ("EMI") did not raise its concerns regarding the sufficiency of SWBT's physical facilities, although EMI now seeks to raise that as a concern to the Commission.

In Section III of its comments, Sprint argues that there was not a reliable fact finding process in the 271 proceeding. Sprint makes this argument despite the extensive amount of

information filed at the OCC and the comprehensive cross-examination of witnesses that took place during four and one-half days of hearings before the OCC.

The comments filed by Cox Communications Inc. ("Cox") alleged that there was a denial of substantive or procedural due process in the 271 proceeding before the OCC. These allegations must be evaluated in light of Cox's minimal level of active participation in the 271 proceeding. Cox OK was a party to the 271 proceeding, but chose not to present any evidence or otherwise participate. It is a fundamental rule that parties cannot raise issues before an appellate court that were not raised in the trial court. *Great Plains Federal Savings and Loan v. Dabney*, 846 P.2d 1088 (Okla. 1993); *Jones v. Alpine Investments, Inc.*, 764 P.2d 513 (Okla. 1987). The role of the FCC in this proceeding could be said to be analogous to that of an appellate court. Therefore, this fundamental rule would preclude Cox from raising issues before the FCC after it chose not to raise these issues during the 271 proceeding before the OCC. Further, the comments filed by Cox before the FCC on November 15, 2000, are totally void of any citations of case law in support of its arguments.

The only attempt by Cox OK to present any evidence during the 271 proceeding occurred when Cox OK filed its post-hearing Motion to Modify Order No. 445180. Cox OK attempted to introduce evidence into this proceeding regarding the status of local competition through hearsay statements of its Manager of Regulatory Affairs in an affidavit attached to the motion. The proffered "evidence" was an affidavit of the Cox OK Manager of Regulatory Affairs regarding representations obtained through telephone conversations with representatives of Logix Communications ("Logix") and Brooks Fiber ("Brooks"). The post-hearing motion and affidavit were filed October 9, 2000, and the affidavit does not identify the representatives of Logix or Brooks who were contacted. Cox OK had the opportunity to develop evidence on this issue from

June 9, 2000, but did not file any response to the Affidavit of Mark Johnson filed on behalf of SWBT, which was adopted in his direct testimony. Cox's assertions concerning what Cox believes about the status of local competition are of no evidentiary value.

B. Performance Measures Process Issues

Cox, in Section IV of its comments mischaracterizes the action of the OCC in adopting performance measures Version 1.7. The OCC did not wholesale adopt Version 1.7 of the Performance Measures. The Administrative Law Judge ("ALJ") in the 271 proceeding took judicial notice of the record in Cause No. PUD 99-131 ("99-131") regarding performance measures. Also, there was a great deal of evidence presented in the 271 proceeding regarding performance measures. AT&T and SWBT supported the use of Version 1.7 of the Performance Measures in the O2A. Cox had the opportunity but failed to present testimony in opposition to Version 1.7 of the Performance Measures.

The OCC is entitled to rely on proceedings conducted in other states as long as the OCC conducts its own independent examination regarding the issues. The Oklahoma Supreme Court adopted the reasoning of the U.S. Supreme Court and recognized the ability of the OCC to take notice of proceedings conducted in other states in *State v. Southwestern Bell Telephone Co.*, 662 P.2d 675 (1983)"

> "In the absence of a statutory provision to the contrary, constitutional due process and the requirement of full hearing do not preclude the consideration by the members of a fact finding agency of evidence and conclusions reached in proceedings not conducted in the personal presence of the members of the fact finding agency, provided that the individual members of the fact finding agency in making its determination may and do consider and appraise the evidence which justified the conclusions reached by the fact finder made outside the presence of the determining body."

Morgan v. United States, 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288 (1936); *Knapp v. State Industrial Com.*,195 Okl. 56, 154 P.2d 964 (1944); 18 ALR 2d 608. There was no unlawful delegation of authority of the OCC regarding performance measures.

The implementation of performance measures by order was not a requirement set forth in the January 28, 1999 Report and Order in the 271 proceeding, as alleged by Cox and Sprint. Sprint took the position that the performance measurements and data to be reported to the OCC in support of the 271 proceeding to demonstrate compliance must be pre-approved by the OCC. There is simply no order to that effect. The order quoted by Sprint only states that performance measurements should be in place to monitor SWBT's provisioning of these items. SWBT was measuring performance data pursuant to Version 1.6 and making reports available via its website prior to filing its request for approval to provide interLATA calling on June 9, 2000.

The procedural question contemplated by those participating in this proceeding was whether SWBT should be allowed to present its case in support of its request for relief under Section 271 of the FTA based upon Version 1.6 as reported in Oklahoma. Otherwise, SWBT would have to wait until implementation of the 99-131 performance measures and gathering of data pursuant to those measures prior to presentation of its 271 request for relief.

There was no requirement in Interim Order No. 442838 in 99-131 that the Oklahoma specific performance measurements would have to be implemented prior to SWBT reopening the 271 proceeding. While there were various requests for relief in the Amended Application in 99-131, Interim Order No. 442848 only determined what performance measures were appropriate at the time of the hearing. The performance measures proceeding is an ongoing process and Interim Order No. 442838, by its very nature, contemplated a periodic updating of the measures. Judicial notice being taken of 99-131 in the 271 proceeding, along with the evidence submitted,

gave the OCC a full record regarding this subject matter. PUD 99-131 is continuing in nature and there is no restriction, nor should there be, of the OCC taking judicial notice in the 271 proceeding regarding the remaining issues in 99-131. The OCC found in the 271 proceeding that there was merit to adopting the performance measures on a regional basis based upon the testimony at the hearing and the failure of any party to present testimony in opposition of Version 1.7. There was a second phase originally contemplated in 99-131, which would address the remaining issues related to Interim Order No. 442848, but there was no prohibition placed upon SWBT regarding pursuit of relief in the 271 proceeding. Some of the parties would have preferred to have the OCC deny SWBT's motion to reopen the 271 proceeding. SWBT offered the evidence that was currently available in support of its application, under Version 1.6 that was being reported in Oklahoma. All participants in the 271 proceeding were aware that SWBT was taking this approach and that SWBT would be presenting evidence on the remaining issues of 99-131.

The 99-131 cause was an attempt to arrive at the most current and appropriate performance measures. Measures under Version 1.6 are being reported in Oklahoma with ongoing work on implementation of Version 1.7 in Oklahoma. The OCC decided to go forward with a hearing on Oklahoma specific measures as opposed to waiting to see which measures were adopted in Texas in Version 1.7. It was contemplated in Interim Order No. 442848 that once Texas had arrived at Version 1.7, that these measures would be presented to the OCC in 99-131 and a determination would be made regarding their appropriateness. It was contemplated throughout the 99-131 hearing that Texas Version 1.7 would be presented to the OCC for review once completed. This would be done in an effort to synchronize performance measures on a

regional basis as much as possible. The phrase that was constantly used throughout the proceeding was "we do not want to reinvent the wheel".

There was recognition of the arduous work that took place at the Texas Commission by the participants in the Texas proceeding. Cox was the only participant in the Oklahoma proceeding that did not participate in the Texas performance measurements docket. Ample evidence was presented at the hearing on the 271 proceeding to justify the adoption of the Texas Performance Measures Version 1.7 as appropriate for Section 271 relief in Oklahoma. The "Agreed Points" filed in the 271 proceeding merely reflects an attempt by Public Utility Division Staff to have SWBT agree that, regardless of whether Version 1.7 was appropriate for 271 purposes, that phase of 99-131 would not be appealed.

The arguments of Cox, Sprint and other commenters concerning the consolidation of the performance measures issues into the 271 proceeding are likewise without merit. The SWBT filing put parties on notice that these issues were being addressed by SWBT. Parties could choose to respond or not based upon their positions. All parties had been aware throughout the process in the 271 proceeding and 99-131 that the Texas Performance Measurements proceeding was to be considered. The OCC ordered that SWBT's Performance Measurements be subject to ongoing 6-month reviews which will occur in 99-131.

C. Monitoring of Performance Measures

Monitoring of Performance Measures will be an ongoing process at the OCC, with analysts assigned to the project based upon the target areas that have the greatest end-user impact. In the Performance Measures 99-131 cause, it was anticipated that there would be a series of six month reviews to determine the continued appropriateness and necessity of the performance measures. A review will be conducted regarding the necessity of maintaining the

performance measures that were deemed appropriate pursuant to Interim Order No. 442838. In the event any of the Oklahoma specific measures are deemed to remain necessary, dates for implementation and data gathering must be addressed, in addition to the development of penalties for the Oklahoma specific measures. Additionally, it is anticipated that performance measures will continue to adapt to the changing competitive environment and as much uniformity as possible will be maintained within the region. All interested parties will have the opportunity to be included in the review process.

OCC Staff will review data as reported by SWBT on SWBT's web site. OCC Staff will look for trends that could affect competitors and their end-users.

In the event a dispute arises regarding data relevant to performance measures, a SWBT competitor will be able to file a cause to have the OCC review its concerns on an expedited basis. The penalty mechanisms currently being utilized are those in the O2A relating to the Performance Measures in Version 1.7.

Monitoring has already begun at the OCC regarding Version 1.7 and, as the performance measures adapt to the competitive circumstances, monitoring of these new measures will take place at the OCC. The OCC Staff will work with the parties to make this a meaningful process to all participants and to resolve conflicts both formally and informally.

In the event a CLEC has opted into the O2A or has added the optional O2A appendix regarding performance measures and the performance remedy plan to its interconnection agreement, the CLEC will be able to avail itself of the OCC's expedited dispute resolution rules which are available for resolving disputes concerning interconnection agreements. The expedited dispute resolution rules (sometimes referred to as the "Rocket to Docket" rules) are attached hereto as "Attachment A."

D. The Nunc Pro Tunc Order

Cox makes the allegation that the OCC made material and substantive changes to Order No. 445180 in violation of state law. This assertion is unsubstantiated and erroneous. OCC Rules allow the OCC to issue an order nunc pro tunc to correctly reflect the judgment or action of the OCC. *See* OAC 165:5-17-4:

> "165:5-17-4. Nunc Pro Tunc
> With or without notice or hearing, the Commission may make or cause to be made an order nunc pro tunc to correct any clerical errors, mistakes, or omissions in an order, or as to timely mailing of the order by the Commission or otherwise to cause the order to correctly reflect the judgment or action of such Commission." (emphasis added)

The language of Order 445180 was in conflict with the Attachment 11 appended to Order No. 445180. It was obvious that a mistake had been made regarding Attachment 11 because no AT&T witness was presented at the hearing to support AT&T's version of Attachment 11. AT&T merely proposed in its comments that upon conclusion of the Texas arbitration, the resulting contract language should be incorporated into the O2A. AT&T Comments, at p. 5. AT&T then attached its proposed Attachment 11 to the comments. Thus, AT&T's Attachment 11 only represented what AT&T requested in the Texas arbitration and was wholly unsupported by any evidence. By contrast, the Version of Attachment 11 appended to the original Order had been amended as a result of motions by parties during the hearing process. The Order Nunc Pro Tunc (Order No. 445340) amended the original Order (Order No. 445180) to reference the version of Attachment 11 which had been included with the original Order since the beginning.

Cox, Sprint and other commenters would have the FCC and the OCC believe that there is no way such an error can be corrected to reflect the true intent of the OCC. The OCC is

permitted by rule to correct its orders to reflect its intent. The errors were properly corrected. Further, all parties appeared before the OCC and argued regarding the various motions that were filed in opposition to the Order Nunc Pro Tunc. All parties were provided an opportunity to be heard in this regard so it is apparent that the issues were fairly considered, and any procedural arguments regarding the Order Nunc Pro Tunc were meritless.

The allegations of Cox and Sprint regarding *ex parte* contacts are baseless. While the 271 proceeding has been declared judicial in nature, the 99-131 cause is a forward-looking cause, which establishes a set of standards to be applied in the future. It is, therefore, legislative in nature and may be treated as such. There is no restriction on discussion of purely procedural matters that relate to the 99-131 cause. No agreement was reached at any meeting between the parties in the presence of the Commissioners' Aides. The PUD Staff and SWBT did discuss procedural matters relating to the 99-131 cause at a meeting attended by the Commissioners' Aides. An agreement was reached the next day between SWBT and PUD Staff, which basically secured the commitment of SWBT to forego challenging the 99-131 performance measures based solely upon any outcome in the 271 proceeding. This is the type of commitment that the CLEC parties to the 99-131 cause had claimed to desire.

It is a basic rule of procedure that a party such as SWBT may present its cause to a Court and unless there can be no set of facts that would justify the cause, the case will be allowed to go forward. PUD Staff recognized this principle and agreed to withdraw its opposition to SWBT's Motion to Reopen filed in the 271 proceeding in exchange for the agreement in 99-131. All parties were informed regarding the meeting between PUD Staff and SWBT. No procedural or tactical advantage was gained by SWBT. The unsubstantiated allegations that have been made by Cox are not supported by the record. No agreement with SWBT was ever reached in the

presence or with the participation of Commissioners' Aides. Further, the parties have been assured on the record in this proceeding that the Commissioners' Aides did not discuss these matters with the Commissioners. Therefore, all parties knew of the proposed schedule change prior to its presentation to the Commissioners and were allowed a full opportunity to be heard. The agreement between PUD Staff and SWBT was presented to the Commissioners in a noticed hearing and remanded to the ALJ to develop a procedural schedule for the 271 application. This schedule was then presented to the Commissioners for adoption in an open hearing with all desiring parties present and participating.

III. INTERCONNECTION IN ACCORDANCE WITH §§ 251(c)(2) and 252(d)(1)

The pertinent parts of 47 USC 251(c)(2) and 252(d)(1) are as follows:

§ 251(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS. - "(2) INTERCONNECTION. – The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

and

§ 252(d) PRICING STANDARDS.- "(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES. – Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section –

(A) shall be –

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

The FCC in the *Texas Order* ¶ 78, "§ 251 requires an incumbent LEC to allow a competitive LEC to interconnect at any feasible point." As outlined in the *Memorandum of the Federal Communications Commission as Amicus Curiae, US West Communications, Inc., vs. AT&T Communications of the Pacific Northwest, Inc., et. al*, No. CV 97-1575 JE, the FCC has interpreted this to mean that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible. Thus, new entrants

may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination. Indeed, section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point in the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.

A review of the comments by the CLECs, particularly those CLECs who participated and were involved in the Oklahoma proceedings, reflects that those CLECs simply restated the concerns they raised before the OCC and those previously raised before the Texas Commission. The language adopted and incorporated into the O2A is based upon the same language which was approved by the FCC in the *Texas Order*. Like the T2A, the O2A was not designed as a "one size fits all" document with sufficient detail to address each and every carrier's unique business plan. Moreover, no CLEC is required to take the O2A either in part or in its entirety; rather, it is free to negotiate and even arbitrate, if necessary, its own agreement with SWBT outside the O2A. At the technical conference held October 24, 2000, the parties were able to clarify some of the text in SWBT's Attachment 11, regarding the single point of interconnection.

The OCC believes that the O2A as set forth in OCC Order No. 445180 and as amended by Order No. 445340 fully complies with the intentions of the FCC's single point of interconnection requirement. It should be further noted that AT&T has filed for arbitration of an interconnection agreement with SWBT in Oklahoma (Cause No. PUD 20-587). One of the issues raised in the arbitration is the appropriate determination of interconnection locations between SWBT and AT&T.

IV. LINE SPLITTING/SHARING AND LOOP CONDITIONING

SWBT has not filed a docket in Oklahoma to establish costs for line splitting or line sharing. However, SWBT makes line sharing and line splitting available to CLECs in Oklahoma pursuant to an optional amendment to the O2A. The rates for line sharing and line splitting are set at zero on an interim basis, with no true-up following March 27, 2001 (6 months past the OCC's September 28, 2000 order). Therefore, the OCC believes CLECs have the opportunity to begin expeditiously providing local exchange service through line sharing/line splitting, without running the risk of accumulating large amounts of unanticipated financial obligations prior to permanent rates being established. Additionally, SWBT has the incentive to file a docket in Oklahoma to obtain permanent rates for line sharing and line splitting, if it believes a zero rate is insufficient to allow them to recover their costs.

Cause No. PUD 20-192 is open to address the cost of loop conditioning (deconditioning). Order Number 445735 was entered on October 17, 2000, to stay the proceedings in PUD 20-192. The Order went on to state that during the stay, the applicable rates for loop conditioning will be those contained in the various interconnection agreements between SWBT and CLECs and those rates available pursuant to the conditions adopted in FCC 99-279 and CC Docket No. 98-141. The stay will be in effect until the expiration of 6 months from the order staying the proceeding or until SWBT has received requests from CLECs, including ASI, to perform loop qualification tests. These loop qualification tests are conducted for the purpose of determining the activities required to provision DSL services and thus, the basis for the elements to be costed. The agreement was for at least 500 loops in Oklahoma City, 500 loops in Tulsa, and 200 loops in all other areas of the State. In November, 2000, the first loop qualification report was filed by SWBT. This report shows that as of the date of the report, SWBT had received 1170 requests

from Oklahoma City, 763 requests from Tulsa and 462 requests from the other parts of the State. Accordingly, any party may move to lift the stay of the procedural schedule in PUD 20-192. In the meantime, a CLEC that opts into the O2A will pay zero in loop conditioning costs on an interim basis, subject to true-up, regardless of the length of the loop for which conditioning is sought. A CLEC that has not opted into the O2A will be able to receive the loop conditioning rates from the SBC/Ameritech merger order, which sets the loop conditioning rates for loops less than 12,500 feet at zero.

V. OSS TESTING

Members of the OCC Staff, including the ALJ, and Commissioner Denise Bode, made an on-the-record visit to Texas to see the workings of the Operational Support System ("OSS") in person. This observation was transcribed in the record of the cause and further supports that the system used to process Oklahoma orders is the one used in Texas.

Extensive testimony was presented to the OCC regarding the sufficiency of SWBT's OSS system used to process customer orders from Oklahoma CLECs. The OCC found that Oklahoma used the same OSS systems, processes, and procedures that were in place and were approved in Texas. The OCC was not persuaded by the CLECs of OSS insufficiency and denied their request for additional testing.[1]

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[1] OCC Order No. 445180, p. 171. The methods of access and OSS functionality approved by the FCC in the Texas Order are employed in Oklahoma and across SWBT's region. SWBT's Ham Rebuttal Test. at 5 n. 6; SWBT's Ham Aff. ¶ 7; Hearing Transcript, Sept. 18, 2000, pp. 19-20. Each of the systems used by CLECs for pre-ordering and ordering functionality – namely DataGate, Verigate, EDI (pre-ordering), CORBA, LEX, and EDI (ordering) – operate on region-wide servers located in Dallas, Texas. SWBT's Service Order Retrieval and Distribution ("SORD") system electronically processes service orders for CLEC service requests sent via EDI or LEX, as well as for SWBT retail customers. SORD is a region-wide system, operated out of two Data Centers – one located in Dallas, Texas, and the other in St. Louis, Missouri. The SORD processors located in these centers constitute the same hardware and run identical software. As indicated in the Hearing Transcript, Sept. 18, 2000, pp. 74-75, SORD is a single system, developed originally as SWBT's retail five-state ordering system. Because all SORD processors are identical to the processor used in the Telcordia OSS test, there does not appear to be a need to conduct an independent test of the SORD processor in St. Louis.

VI. LOCAL EXCHANGE COMPETITION IN OKLAHOMA

The OCC previously determined that facilities-based local competition existed in Oklahoma, in Interim Order No. 434494, issued on August 8, 1999. The OCC remains convinced that facilities-based local competition is active, and will continue to grow in Oklahoma. Presently, there are over 100 companies certified as Competitive Local Exchange Carriers and over 300 companies certified as Resellers of long distance.

It is uncontroverted that Cox OK, Brooks, and Logix provide service to their customers over their own facilities. Cox OK declined to participate in the proceeding -- Cox did not file testimony to controvert the statements of SWBT's witnesses that local facilities-based competition exists, nor did it controvert statements as to the amount of that competition. The proper time for Cox to make the allegations that there is no basis in fact for the supporting statements upon which the OCC relied, was at the adversarial hearing which began September 18, 2000. Cox now attempts to interject statements, which are not subject to cross-examination, as facts. Such statements are not properly a part of this record.

In fact, Logix, unquestionably a facilities-based local exchange provider, entered a statement in support of SWBT's application to provide in region interLATA service. Brooks presented no testimony on this issue in the hearing.

Section 271(c)(1) of the Federal Telecommunications Act requires that "...the Bell operating company provide access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers." Further the telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities

or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Based on the investigations of the OCC, the OCC is convinced that SWBT has established that facilities-based local competition does exist and continues to expand. Since the record closed, the OCC approved the Interconnection Agreement between Valor Telecommunications of Oklahoma CLEC, LLC ("Valor") and SWBT based on the O2A (*see* Order No. 447380, Cause PUD 20-652).

VII. UNE PRICING

In July, 1996, AT&T filed an application seeking arbitration of certain unresolved issues regarding an interconnection agreement between AT&T and SWBT, including the establishment of cost-based rates for unbundled network elements (UNEs).[2] In October, 1996, the OCC issued Order No. 406117, in which the OCC bifurcated the arbitration proceeding and directed that a separate hearing be scheduled for the presentation of cost studies and for the determination of permanent rates for UNEs, customer change charges, and interim and/or permanent number portability. The OCC issued its Order Regarding Unresolved Issues, Order No. 407704, in December, 1996.

In April, 1997, AT&T filed an application along with an arbitration agreement and matrix containing the terms of its interconnection agreement with SWBT that AT&T alleged remained in dispute.[3] On June 30, 1997, the OCC, in Order No. 413709, adopted the Arbitrator's rulings with respect to the disputed interconnection agreement issues, including his recommendation to adopt interim rates, pending the establishment of permanent rates in a later proceeding. On

[2] Cause No. PUD 96-218.
[3] Cause No. PUD 97-175.

July 18, 1997, AT&T and SWBT jointly filed the conformed interconnection agreement, which the OCC approved on August 18, 1997, in Order No. 415164.

In May, 1997, a proceeding was commenced to determine the costs of and rates for SWBT's UNEs.[4] The second phase of the AT&T/SWBT arbitration, relating to the establishment of rates, was incorporated into the new proceeding. On July 17, 1998, the OCC issued a Final Order, Order No. 424864, adopting rates contained in a Stipulation dated March 9, 1998, as temporary rates to be incorporated for the duration of any interconnection agreement previously approved by the OCC. This Order further held that any CLEC currently negotiating an interconnection agreement could incorporate those rates into its agreement or negotiate other rates under Sections 251 and 252 of the Act.

On October 20, 1999, in RM 99-006, the OCC adopted rules setting forth the "Oklahoma Plan," which is an alternative regulation process for incumbent local exchange carriers (ILECs) that serve more than 75,000 access lines in Oklahoma. The Oklahoma Plan was approved by the Governor of the State of Oklahoma on November 2, 1999, and was adopted by the Legislature in April, 2000. Pursuant to the Oklahoma Plan, SWBT, in October, 1999, filed an application for approval of its transition plan for alternative regulation.[5] On November 29, 1999, the active participants in the SWBT Transition Plan docket, including AT&T, entered into a Stipulation, and, after a hearing held on November 29-30, 1999, on December 10, 1999, the OCC unanimously adopted an Order Approving Stipulation, Order No. 437259. In the Stipulation, the parties agreed to a schedule of Promotional Discounts to SWBT's UNE rates that were established by Order No. 424864, issued in the cost docket, PUD 97-213. Rates not subject to the Promotional Discounts were ordered to remain at the rates established by Order No. 424864,

[4] Cause No. PUD 97-213.

or in any applicable interconnection agreement, until further order of the OCC. The Stipulation approved by the OCC on December 10, 1999, also provided that no cost proceeding to change UNE rates established by Order No. 424864 would be initiated until two years from the date the Promotional Discounts commenced (June 15, 2000), and no change in the UNE rates established in Order No. 424864 would be effective until the earlier of June 15, 2005, or until such time as certain competitive benchmarks established in the Stipulation are met.

In arbitrating an interconnection agreement pursuant to the Act, in establishing costs of and rates for UNEs, in approving interconnection agreements, and in resolving post-interconnection agreement disputes, the OCC has sought to strike an equitable balance that would encourage CLECs to provide the benefits of competition to Oklahoma customers, while protecting the ability of the ILEC, to continue to provide the same high level of service they have provided for many years under the regulation of the OCC. In the proceedings described above, as well as other proceedings carried out under the Act, the OCC has established an environment that encourages competition and allows telecommunications providers, both ILECs and CLECs, to effectively compete in the local exchange market. This ability to effectively compete in the local exchange market benefits not only ILECs and CLECs, but also consumers; by giving them more choices in the local exchange market.

The UNE rates approved by the OCC in Cause No. PUD 97-213 and PUD 97-442 ("OCC's cost dockets") were cost based and comply with the requirements of Section 271 of the Act. Although the ALJ recommended approval of the stipulation in the OCC's cost dockets, it is important to recognize that in addition to the presentation of the stipulation, testimony was also taken from SWBT, Staff and AT&T regarding whether the rates in the stipulation were cost

[5] Cause No. PUD 99-613.

based. Therefore, the OCC had the benefit of a fully developed record upon which to consider the reasonableness of the stipulated UNE rates.

At the time the OCC's cost dockets were initiated, OAC 165:55-17-25 of the OCC's rules required that Long-Run Incremental Cost ("LRIC") studies be provided to the OCC in any arbitration regarding the common costs for interconnection of facilities and network elements. SWBT, AT&T and the independent consultant retained by the OCC Staff each submitted cost studies based upon LRIC, in the OCC's cost dockets. The OCC's definition of LRIC[6] is very similar to that of the FCC regarding Total Element Long Run Incremental Costs ("TELRIC") and the OCC believes that the LRIC cost studies performed in Oklahoma were the functional equivalent of a TELRIC study. (*See* Order No. 424864, p. 3) LRIC studies, while being forward looking, typically set a lower cost than the cost determined by a TELRIC study.

In the OCC's cost dockets, the ALJ concluded that the stipulated rates are based upon an analysis of the costs presented by the parties in that proceeding and are thus, cost-based. He noted that the performance of cost studies is not an exact science, but instead is a process which requires substantial adjustments and estimations. He further found that the testimony of Cox, which was a facilities based provider already providing service in Oklahoma and which already had collocation agreements with SWBT, should be given more weight than the testimony of AT&T. The ALJ reached this conclusion because AT&T was not then providing local exchange

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[6] OAC 165:55-1-4 states: "Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

service in Oklahoma and had stated that it had no plans to enter the local exchange market in Oklahoma in the near future.

The ALJ further found that for the purpose of the OCC's cost dockets, the parties (including AT&T) had agreed that SWBT's cost model would be used and that the focus at the hearing would be on the inputs into the model. Further, SWBT and AT&T reached a stipulation that the cost of money should be 10 percent. The ALJ's report in the OCC's cost dockets provides extensive discussion of the different positions argued by SWBT and AT&T on the various inputs into the SWBT cost model that the parties had agreed to utilize. The testimony of Cox witness Dr. Collins, in support of the stipulation, was that the input data to the cost studies presented by the various parties was subject to speculation, was forward looking and had been developed as a result of estimates of time, cost, inflation rates and other subjective estimates. The ALJ found that there was a continual balancing and weighing process that ran throughout all of the various UNE cost proposals, due to different estimates of time, cost, inflation rates, and depreciation rates. The ALJ also noted SWBT agreed that some aspects of its original proposal should be modified to account for some of AT&T's suggestions, which would reduce some of the rates proposed by SWBT. The ALJ concluded that the UNE rates in the stipulation were supported by the evidence and met the requirement in Section 252 of the Act that rates be cost-based.

The Department of Justice expressed concern that the UNE rates adopted in the OCC cost dockets were to be temporary rates, to be applied for the remaining duration of any interconnection agreement, previously approved by the OCC, which provided that the rates would be incorporated into said agreements. It is the position of the OCC that although the rates were to be temporary rates at the time the OCC issued Order No. 424864, the rates do provide

competitors with a firm basis upon which to make investment decisions, because the UNE rates are not subject to true-up when new rates are established. Additionally, the UNE rates were re-established as the long-term UNE rates in Oklahoma in Order No. 437259 adopted December 10, 1999, in PUD 99-613.[7]

In SWBT's Transition Plan, which was adopted as part of SWBT's change to Alternative Regulation in Oklahoma, UNE rates have been discounted from the rates established in the OCC's cost dockets, for a period up to 5 years, depending upon the level of CLEC competition utilizing the reduced UNE rates. In determining that it would be appropriate to discount UNE rates as part of SWBT's Transition Plan, the OCC balanced the interests of Cox as a facilities based CLEC, with the interests of CLECs desiring to provide local exchange service through the use of UNEs, giving consideration as well to the public interest of increasing local exchange competition in Oklahoma.

The Commission, in approving a cap on the number of lines to which the promotional UNE discounts could be applied, sought to incent CLECs to quickly enter the Oklahoma local exchange market utilizing the UNE discounts (prior to the line caps being reached), rather than wait several years before commencing to provide local exchange service in Oklahoma. A CLEC who waits until after the line caps had been met, will pay the UNE rates adopted in PUD 97-213 until such time as a new UNE costing docket is completed.

The two-year moratorium on initiating a new UNE cost docket and a limit of up to five years on changing both the UNE discounts and the UNE rates which were adopted in PUD 97-213, was put in place to allow facilities-based CLECs a firm basis on which to make investment

[7] Order No. 437259 states at paragraph 8 on p. 4 that a new cost proceeding shall not be initiated to change the UNE rate established in the Cost Docket earlier than two years from the date of commencement of the Promotional Period.

decisions; knowing that UNE rates would not be decreased beyond the promotional discounts for a minimum of two years. This was important to the facilities-based CLECs, because further reductions in the UNE rates could increase the level of competition in the local exchange market, thereby decreasing the value of the facilities-based CLEC's investment in Oklahoma. Again, the OCC sought to balance the interests of all parties and the public in adopting time limitations for the UNE discounts.

The UNE rates which were discounted were those identified during discussions with CLECs regarding SWBT's Transition Plan, as the UNE rates the CLECs needed to have discounted in order to give serious consideration to entering the local exchange market in Oklahoma, prior to a possible transition to providing service as a facilities based competitor. It should be noted that since the adoption of the promotional UNE discounts, 14 CLECs have incorporated the promotional discounts into their interconnection agreements with SWBT. It is the belief of the OCC that actual usage of the promotional discounts for UNEs demonstrates that Oklahoma's UNEs are currently priced at a level that will permit a CLEC a reasonable opportunity to effectively compete with SWBT in the provision of local exchange service in Oklahoma.

VIII. CONCLUSION

The OCC gave careful consideration to its evaluation and determination of appropriate UNE rates in Oklahoma. The OCC adopted UNE rates in the OCC's cost dockets that are based upon a cost methodology which is the functional equivalent of the TELRIC methodology. Thereafter, the OCC listened to CLECs who wanted to begin providing local exchange service in Oklahoma and ordered significant discounts for a promotional period, to specific UNE rates identified as being of particular importance to the CLECs in making a decision whether to

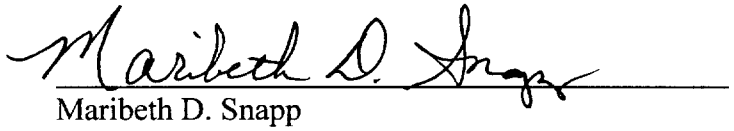
compete in the local exchange market in Oklahoma. The OCC continues to evaluate measures it could take in Oklahoma that would encourage the expansion of local exchange competition in Oklahoma.

The OCC hereby files reply comments to the Commission regarding procedural and due process issues, performance measures, interconnection, line splitting, line sharing, loop conditioning, OSS testing, local exchange competition and UNE pricing.

The OCC will continue to monitor the compliance by SWBT with the performance measures adopted in Oklahoma. In the event there is a "backsliding" in the performance of SWBT, the OCC will not hesitate to take such action as may be available to the OCC to correct the performance of SWBT.

The OCC urges the Commission to give deference to the OCC's determination that local competition exists in Oklahoma, that the 14 point checklist set out in § 271 has been met, and that the Oklahoma UNE rates are cost based. The OCC urges the Commission to approve SWBT's application for 271 relief as set forth in OCC Orders No. 445180 and No. 445340.

Respectfully submitted,



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Dated: December 11, 2000

ATTACHMENT A

ATTACHMENT "A"

SUBCHAPTER 22. RESOLUTION DISPUTES

SUBCHAPTER 22. RESOLUTION DISPUTES

165:55-22-1. Resolution procedures arising under interconnection agreements

(a) **Purpose.** This Subchapter establishes procedures for Commission resolution of disputed issues arising under or pertaining to interconnection agreements approved by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and Subchapter 17 of this Chapter.

(b) **Type of disputed issues.** The dispute resolution procedures set forth in this Subchapter are intended to resolve disputes concerning:

(1) Proper interpretation of terms and conditions in the interconnection agreement;

(2) Implementation of activities explicitly provided for, or implicitly contemplated in, the interconnection agreement;

(3) Enforcement of terms and conditions in such interconnection agreements; and

(4) Any issue not explicitly addressed in the interconnection agreement that the parties agree to resolve pursuant to this Subchapter; provided the resolution of the issue would facilitate the provisioning of service pursuant to the interconnection agreement.

(c) **Use of this Subchapter.** The procedures described in this Section are not intended to replace the dispute resolution procedures set forth in the Interconnection and Resale Agreements ("Agreements") between the parties. However, the procedures set forth in this Subchapter may be used to resolve disputes arising out of the Agreements.

(d) **Best efforts.** As a prerequisite to utilizing this Subchapter, the parties must be able to demonstrate that they have exhausted the dispute resolution procedures, if any, in accordance with their Agreements.

[**Source:** Added at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-2. [RESERVED]

165:55-22-3. Facilitation

(a) **Informal process.** Facilitation is an informal, voluntary process wherein both parties to the dispute agree to bring the dispute before the Commission and to be bound by the facilitator's decision.

(b) **Facilitation request.** The request for an informal facilitation conference may be made by filing 10 copies of the joint written request with the Director of the Public Utility Division. The joint written request should include from each party:

(1) The name, address, telephone number and facsimile number of each party to the interconnection agreement and each party's designated representative;

(2) A description of the parties' efforts to resolve their differences by negotiation;

(3) A list of the narrow issues in dispute, with a cross-reference to the area of the agreement applicable or pertaining to the issues in dispute;

(4) Each party's proposed solution to the dispute; and

(5) Identification of the agreed upon facilitator.

(c) **Facilitator.** The facilitator may be:

(1) Any individual agreed to by the parties, including a Commission employee with knowledge regarding telecommunications; or

(2) An individual selected by the Commission in an open meeting from names submitted by the parties.

(d) **Facilitation conference.** The facilitator shall be responsible for notifying the parties of the time, date, and location of the meeting which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference.

(e) **Procedure.** The facilitation conference shall be conducted as an informal meeting and will not be transcribed. Only parties to the interconnection agreement may participate as parties to the facilitation conference. Interim relief is not applicable for either party to the dispute. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to one of the formal processes set forth in this Subchapter.

(f) **Results of the facilitation conference.** The informal facilitation conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. In the event that the parties do not reach an agreement as a result of the informal facilitation conference, the parties agree to have the decision of the Commission appointed facilitator be binding on the parties. The facilitator's decision will be binding on both parties. The decision from the informal facilitation conference shall be rendered within thirty (30) days from the joint written request for facilitator.

[**Source:** Added at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-4. [RESERVED]

165:55-22-5. Formal non-expedited dispute resolution

(a) **Commencement.** This procedure is a formal proceeding for dispute resolution and will commence when a party (complainant) files a complaint with the Court Clerk of the Commission and, on the same day, delivers a copy of the complaint either by hand delivery, certified mail, or facsimile to the Director of the Public Utility Division, to the other party (respondent) to the interconnection agreement from which the dispute arises, to the Office of General Counsel, and to the Office of the Attorney General. If facsimile is used, a certificate of service shall be provided.

(b) **Process.** Unless otherwise ordered by the arbitrator, parties shall file with the Commission Court Clerk's office 10 copies of pleadings. The complaint shall be in a consistent format approved by the Director of the Public Utility Division and shall include:

(1) The name, address, telephone number, facsimile number of each party to the interconnection agreement, and the complainant's designated representative;

(2) A description of the parties' efforts to resolve their differences by negotiation;

(3) A detailed list of the precise issues in dispute, with a cross-reference to the area or areas of agreement applicable or pertaining to the issues in dispute; and

(4) An identification of pertinent background facts and relevant law or rules applicable to each disputed issue.

(5) The complainant's proposed solution to the dispute.

(c) **Arbitrator.** Upon receipt of a dispute resolution complaint filed under this Section, an arbitrator shall be selected to act for the Commission, unless two or more of the Commissioners choose to hear the complaint *en banc*.

The parties shall be notified of the Commission designated arbitrator, or of the Commissioners' decision to act as arbitrator themselves. The arbitrator may be advised on legal and technical issues by members of the Commission Staff. The Commission staff members selected to advise the arbitrator shall be determined by the Director of the Public Utility Division and shall be identified to the parties. Within five (5) days of the selection of the arbitrator being named, any challenge to the appointment shall be brought forth. No parties to the dispute resolution process may have *ex parte* discussions with the arbitrator regarding the complaint, except those persons designated by the Director of the Public Utility Division.

(d) **Response to complaint.** The respondent shall file a response to the complaint within twenty (20) days after the filing of the complaint and shall serve a copy of the response on the complainant, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the contract applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.

(e) **Reply to response to complaint.** The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The reply shall be limited solely to new issues raised in the response to the complaint.

(f) **Notice and hearing.** As soon as possible after his or her selection, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing of the date, time, and location of the hearing. The hearing shall be held in Oklahoma City unless otherwise ordered by the Commission.

(g) **Transcripts.** The hearing shall be transcribed by a court reporter designated by the arbitrator. Copies of the transcript may be obtained from the designated court reporter at the expense of the requesting party.

(h) **Participation.** Only parties to the interconnection agreement, the Commission Staff, or the Office of the Attorney General, may participate as parties in the dispute resolution process subject to this Subchapter, unless otherwise ordered by the Commission upon a showing of good cause.

(i) **Authority of the arbitrator.** The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the

authority within the Commission to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this Subchapter.

(j) **Discovery.** Parties may obtain discovery by submitting a discovery request consistent with the Commission's Rules of Practice, OAC 165:5, which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by the Commission rules and as allowed within the discretion of the arbitrator.

(k) **Pre-filed evidence and witness list.** The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing under the following guidelines:

(1) The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all its witnesses and all exhibits that the party intends to offer. The joint issues list shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Confidential information shall be treated in accordance with the Commission's Rules of Practice, OAC 165:5.

(2) Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the complaint. The arbitrator shall judge the credibility of each witness and the weight to be given his or her testimony based upon his or her response to cross-examination. If the arbitrator determines that a witness' responses are evasive or non-responsive to the questions asked, the arbitrator may disregard the witness' testimony on the basis of lack of credibility.

(3) The arbitrator may ask clarifying questions at any point during the proceeding and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.

(4) The arbitrator may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator shall determine the filing deadline and any limitations on the length of such submissions.

(l) **Recommendation.** Timelines and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The

recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.
(2) Within ten (10) days from the date of the arbitrator's recommendation is issued, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission *en banc* within ten (10) days of the filing of such appeal, unless the Commission orders otherwise.
(3) With respect to the recommendation by the arbitrator, the Commission en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing. The Commission shall enter its order on the complaint no later than 100 days after the filing of the complaint, unless otherwise agreed to by the parties.

[**Source:** Added at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-6. [RESERVED]

165:55-22-7. Formal expedited dispute resolution
(a) **Need for expedited resolution.** This procedure is a formal proceeding for dispute resolution with an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to OAC 165:55-22-5 apply, except as otherwise specifically set forth in this Section.
(b) **Process.** Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant OAC 165:55-22-5. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in section OAC 165:55-22-5, the complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.
(c) **Notice and hearing.** After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than

seventeen (17) days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three (3) days before the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five (5) days of the filing of the response.

(d) **Recommendation.** Timeliness and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The oral recommendation of the arbitrator shall be filed with the Commission within three (3) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

(2) Within three (3) days from the date of issuance of the arbitrator's recommendation, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission en banc within five (5) days of the filing of such an appeal.

(3) With respect to the recommendation by the arbitrator, the Commission *en banc* may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing. The Commission shall enter its order on the complaint no later than thirty (30) days after the filing of the complaint, unless otherwise agreed to by the parties.

[**Source:** Added at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-8. [RESERVED]

165:55-22-9. Interim relief

(a) **Need for interim relief.** This Section establishes procedures whereby a party who requests dispute resolution pursuant to OAC 165:55-22-5 or OAC 165:55-22-7 may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service.

(b) **Filing a request.** Any request for an interim ruling shall be filed at the same time and in the same cause as the complaint filed pursuant to OAC 165:55-22-5 or OAC 165:55-22-7. The heading of the complaint shall include the phrase "Request for Interim Ruling." The complaint shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A complaint that includes a request for interim ruling shall be verified by affidavit. Such complaint must list the contact person, address, telephone number, and facsimile number for both the complainant and respondent.

(c) **Service.** The complainant shall serve a copy of the complaint and request for an interim ruling on the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division by hand-delivery or facsimile on the same day as the pleading is filed with the Commission.

(d) **Hearing.** Within three business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator selected under this Subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile within one (1) business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.

(e) **Ruling.** Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within 24 hours of the close of the hearing and will notify the parties by facsimile of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued by the Commission pursuant to this Subchapter. The interim ruling shall have no precedential impact.

[**Source:** Added at 16 Ok Reg 2832, eff 7-15-99]